IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE JURISDICTION

SECOND APPEAL NO. 1379 OF 2004
WITH
CIVIL APPLICATION NO.1841 OF 2004.

Kolhapur Zilla Rajya Abkari
Parvana Dharak Samajik Seva Sangh,
Kolhapur Regd. No. 9141
Through Vice-President,
Shri Janardhan Anna Power,
R/o C.C. No. 1388 E. Shahunagar,
Kolhapur And
Member
Shri Dattatraya Vasant Bendra
R/o Shaniwar Peth, 1062,
D Ward, Kolhapur ..Appellant.

Vs.

Kolhapur Municipal Corporation
Kolhapur,
Through Commissioner,
Kolhapur Municipal Corporation,
Kolhapur. ..Respondent.

Mr. A.P. Kulkarni for the appellant
Nr. S.S. Patwardhan for the respondent.

CORAM : ANOOP V.MOHTA J.
DATE : 9TH DECEMBER, 2005.

ORAL JUDGMENT

. The appellant-plaintiff has challenged the impugned judgment and decree passed by the 5th Additional District Judge, Kolhapur, dated 5/8/2004, by which a judgment and decree passed by the II Joint Civil

Judge, J.D. Kolhapur, in Reg. Civil Suit No. 450/1996, dated 5/8/2005, has been confirmed, thereby the suit filed by the appellant to have a declaration under section 38 of Specific Relief Act, 1963, was dismissed with cost. The appellant is an association of retailers of Country Liquor, within the Kolhapur District. The appellant is an association established for the welfare of a person dealing in liquor business. The members of the appellant society are running country liquor shops within the limit of Kolhapur Municipal Corporation-respondent. The members are required to obtain licence from the respondents and therefore, they required to pay requisite licence fee, which used to be increased from time to time. It was lastly increased upto Rs. 500/- per year. Some time in the year 1995, the respondent by an Resolution No. 166/10 enhanced the said licence fee at the rate of Rs. 3000/- per year. Therefore, the appellant filed the present suit for declaration and permanent injunction against the respondents.

2. The respondent is a Municipal Corporation, established and governed by the provisions of Bombay Provincial Municipal Corporation Act, 1949 (hereinafter

referred to as a B.P.M.C. Act). The respondent after following due procedure of law and within the provisions of B.P.M.C. Act and Rules made thereunder, by Resolution No. 166/10, dated 20th February, 1995, increased the licence fee at the rate of Rs. 3000/- per year, being one of the main source of its revenue. It was also necessary to borne and bear the general increased expenses. Therefore, by invoking the provisions of Section 386 of the B.P.M.C. Act, such licence fee was increased, as provided in Chapter XII of the B.P.M.C. Act.

3. Heard the learned advocates appearing for the parties. There is a concurrent finding arrived at by the Courts below, that the suit was bad for want of notice under section 487 of the B.P.M.C. Act. Both the Courts come to a clear conclusion based on the material available on the record that the appellant-plaintiff failed to prove that the action of the respondent was in bad faith, illegal and or void, ab-initio. In this background, the suit as filed without issuing Mandatary notice under section 487 of the B.P.M.C. Act, was not maintainable.

4. Both the Courts have also come to a clear conclusion that the Resolution No. 166/10, dated 20th February, 1995 of the Respondent Corporation standing committee was legal. The respondent corporation, based on the provisions of section 386(2) of the B.P.M.C. Act, which read as under;

"Every such licence or written permission a fee may be charged at such rate as shall form time to time be fixed by the Commissioner, with the sanction of the Corporation"

Within this legal backdrop, apart from other provisions of Chapter XII the respondent has exercised its power and authority and by Resolution No. 166/10 approved the increased rate of liquor licence fee at the rate of Rs. 3000/- per year. It may be noted that the Standing Committee of the respondent has suggested Rs. 1000/- per annum. However, by majority decision, the respondent, after following due procedure of law, increased the licence fee at the rate of Rs. 3000/- per annum. Such increased licence fee for liquor in no way beyond the authority and power of the respondent. There is nothing brought on the record that the respondent has acted arbitrarily and illegally and while passing the resolution of increasing the licence fee in question.

The respondent therefore, has right and authority to increase licence fee and therefore, both the Courts right in coming to the conclusion that the Resolution in respect of enhancement of licence fee was legal. Therefore, there is no substance in the contention raised by the appellant that the enhancement made was arbitrarily or was unreasonable and hearing should have been given by the respondent-corporation to the licence holders. There is no question of giving any hearing to the licence holders by the respondent-corporation, while taking or passing such resolution which is within the scope of B.P.M.C. Act. The Courts below are right in coming to the conclusion, that as the respondent-corporation has power and authority to increase the licence fee.

5. There is nothing on the record to suggest and support the case of the appellant that the licence fee was unreasonable or arbitrary. The allegations of arbitrary, unreasonablness, without any material support cannot be taken note of, specially when the respondent is within their power, by following the due procedure of law, to resolved increase such licence fee. It was observed that the State of Maharashtra has charged such

fees at the rate of Rs. 25,000/- per year. In comparison to that the increased licence fee at the rate of Rs. 3000/- per year cannot be said to be in excess.

6. In this background their remained no doubt that the suit itself was not maintainable for want of mandatary notice under section 487 of B.P.M.C. Act, even otherwise, as the respondent-corporation has within their power and authority through the resolution increased the licence fee. Such act of respondent was within the provisions of the B.P.M.C. Act. The order of dismissal of the suit field by the appellant therefore, need no interference.

. Taking all this into account the second appeal is dismissed with cost.

. Civil Application No. 1841 of 2004 is also dismissed accordingly.

[ANOOP V. MOHTA, J.]